



orcon®



**SUBMISSIONS TO THE COMMERCE COMMISSION IN RELATION TO ACCESS  
PROVIDERS' UNDERTAKINGS LODGED FOR MTAS SCHEDULE 3 INVESTIGATION**

**13 February 2009**

**Public Version  
(there is no confidential version)**

## Table of Contents

Executive Summary .....	2
Bill and Keep, but only if it includes fixed-to-mobile .....	5
Reject the Telecom and Vodafone draft Undertakings: the proposed rates are excessive ..	6
Price benchmarking .....	7
Skate to the Puck .....	8
Per-minute minimum charge .....	9
Glide path .....	10
Bundling and cross-subsidy .....	10
Undertakings too rigid .....	11
Non-price terms .....	11
Draft Undertakings should not hold up the investigation .....	11

## Executive Summary

1. The draft Undertakings from Vodafone and Telecom:
  - (a) continue the artificially high rates in the existing undertakings;
  - (b) extend their distortionary effect on competition and price, by extending out the time during which they would apply, with only small immaterial reductions compared to the international position.

### Negative impact of high MTRs on fixed/mobile competition, and NGN investment

2. Artificially high mobile termination rates have negative impact beyond mobile services, particularly where, as in New Zealand, termination on fixed services has cost-based pricing. High rates negatively impact competition generally including between fixed and mobile services. They also negatively impact migration to and investment in NGN, whether fixed or mobile.

3. As the EU notes:<sup>1</sup>

Significant divergences in the regulatory treatment of fixed and mobile termination rates create a fundamental distortion between fixed and mobile markets and consumers ....<sup>2</sup>

...[Regulators must] promote competition by, amongst other things, ensuring that all users derive maximum benefit in terms of choice, price and quality of service and that there is no distortion or restriction of competition. In order to achieve these objectives, the regulated termination rates should be brought down to the costs of an efficient operator.<sup>3</sup>

4. Ofcom adds:<sup>4</sup>

The extent of convergence will also play a role, since any analysis of options for mobile call termination may also need to consider ongoing changes affecting fixed services, particularly the shift to next-generation networks. Any change to the interconnection regime in one part of the sector may have implications elsewhere and reform is likely to be best considered in light of all of the issues in the round (including questions about transitional issues).

---

<sup>1</sup> European Commission's draft *Recommendation on the Regulatory Treatment of Fixed and Mobile Termination*

<sup>2</sup> Page 3

<sup>3</sup> Page 4

<sup>4</sup> Ofcom, *Mobile citizens, mobile consumers – Adapting regulation for a mobile, wireless world* at para 8.45 (20 August 2008)

### **Rates are tumbling internationally**

5. Telecom relies on European rates to justify continuing these high rates. However, the signals sent by the EU, pointing to termination rates around 2 to 4 NZ cents, have now become actuality. For example, the French regulator is looking to rates around 2 to 4 cents by 2011, and Italy is following the same path. An appeal against the UK regulator's MTRs has, in January 2009, reduced UK rates by around 4 NZ cents. (This appeal is based on the old regime before changes proposed by the EU). It has been estimated that UK rates, if the pricing model in the new EU Recommendation is applied (namely, LRIC), would drop to less than 2.8 cents.
6. This contrasts with, for example, Telecom's and Vodafone's proposed rate for 2009 of 15 cents.

### **Minute-minimum charges**

7. In reality, these rates are a lot higher in real terms, when compared to offshore rates, as New Zealand is one of the few countries that has a minimum charge of a minute per call. The Commission is able to obtain information, to add to call duration data provided by us, to derive the adjusted higher rate.
8. In assessing whether the proposed pricing is acceptable, the counterfactual would be the price in the undertakings, with an adjustment to capture the minute-minimum issue.

### **Skate to the Puck**

9. Reflected in the submissions from Telecom, the debate in New Zealand has incorrectly been based on use of historical benchmarks, without regard to forward looking and other factors. However, the factual should be an estimate of what is likely to happen if there is regulation at Final Pricing Principle level (not at benchmarking Initial Pricing Principle level). This problem is more acute for MTRs in view of the glide paths, current major changes (such as in the EU), and the large divergence of benchmarks from true cost. To get to the factual (an estimate of what the regulated price would be) it is necessary to "skate to the puck". So, for example, using French data, the 2-4 NZ cents at the end of the glide path is much more important in the analysis than current rates.
10. An additional consideration is the appropriate pricing model, given the trend away from TSLRIC to models such as the EU's LRIC approach.
11. Taking the traditional backward looking historical rates approach still produces rates in the undertaking that are substantially excessive. Doing the correct forward looking assessment makes this even clearer.
12. We have outlined why the Commission should recommend regulation of FTM rates despite the undertakings to the Minister. For example, the rise of strategic price discrimination, aided by artificially high rates, is distorting competition.

### **Bill and Keep**

13. With one critical reservation, we support BAK. Our reservation is that the distortions created by having BAK for MTM only (as sought by NZC), and not FTM as well, will create substantial market failure for artificial reasons.
14. For example, if the current FTM rates continue to apply, and there is BAK for MTM, a mobile operator can offer a far cheaper service to a customer than the fixed line operator (which must recover FTM termination charges from its customer). That is caused solely by regulatory distortion (i.e. the artificially high FTM termination rates). Due to this distortion, the benefits of level playing field substitution and competition between fixed and mobile are

lost. For example, fixed operators cannot be as competitive as mobile operators, solely because of this artificial regulatory distortion.

#### **Glide path**

15. The time has come to bring an end to long glide paths. Arguments by long established MNOs that they need extended time to adjust are unsustainable.
16. Extended multi-year glide paths, with a low downward trend, have been relatively uniquely applied to mobile services, in contrast with what has happened to fixed services.
17. Internationally, it is recognised that the time has come to bring this to an end, and that earlier (and questionable) justifications are no longer valid.
18. For example, the EU draft Recommendation concludes glide paths from high rates to LRIC rates should end in 2 years time :<sup>5</sup>

A period of transition until 31.12.2011 should be considered long enough to allow [regulators] to put the cost model in place and for operators to adapt their business plans accordingly while, on the other hand, recognising the pressing need to ensure that consumers derive maximum benefits in terms of efficient cost-based termination rates.

19. Reduction to around 2 to 4 NZ cents in the EU by 2011 contrasts with 11 NZ cents for Vodafone in 2014 and 10 NZ cents for Telecom in 2013.

#### **Non-price terms**

20. The ICA terms are a continuation of the “take-it-or-leave-it” terms imposed by the access providers over many years. They contain numerous one-sided terms, including terms with substantial competition implications (for example, the “No VoIP” clause).
21. We would welcome a discussion with other parties and the Commission to find a way to expeditiously resolve a reasonable set of ICA terms.

#### **Rigidity of undertakings and whether undertakings will realistically be accepted**

22. The current undertakings show that unduly rigid undertakings create problems. While recognising the regulatory certainty factor, we would be particularly concerned if Undertakings as rigid (and biased against access seekers) as Vodafone’s and Telecom’s are accepted.
23. Ultimately, this and other factors may mean that suitable undertakings, capable of acceptance, will be rare. That is unfortunate given their potential to expedite resolution, but this appears to be the reality.
24. For this reason we are pleased to note and support the Commission’s intention to continue regardless with the Schedule 3 investigation, with relatively tight timelines. If it assists, we would welcome a discussion aimed at expediting the process, whilst achieving appropriate outcomes.

---

<sup>5</sup> At page 6. There is an extension to this timeline in limited instances (Para 20 on page 6).

## Bill and Keep, but only if it includes fixed-to-mobile

### Introduction

25. With one critical reservation, we support BAK, generally for the reasons outlined by NZC, Concept Economics, and our own September 2008 Submission to the Commerce Commission on the August 2008 Issues Paper as to Regulation of Mobile Termination.<sup>6</sup>
26. Our reservation is that the distortions created by having BAK for MTM only, and not FTM as well, will create substantial market failure for artificial reasons, to the detriment of end users.
27. NZC seeks BAK solely for MTM. There should only be BAK for MTM if there is also BAK for FTM.
28. Summarising what is outlined below, the large disparities between termination rates for fixed and mobile lines create an artificial distinction between fixed and mobile voice services, preventing real and beneficial competition and substitution between the two.

### Impact of artificially high termination rates on investment and fixed line services

29. Particularly with fixed and mobile convergence/substitution, and NGN investment considerations, setting mobile termination rates should not be undertaken without considering the marked impact on the market outside mobile services. This applies to MTM and FTM termination rates. Artificially high MTRs distort prices and competition, particularly when the termination rates on fixed lines are correctly set on a cost basis (or, in the case of local call termination, zero-rated (i.e. intra-LICA calls are BAK).
30. As the Commission has identified, and as we note below, the current FTM rates are substantially in excess of any cost-based measure. They are artificially high.
31. The European Commission's draft *Recommendation on the Regulatory Treatment of Fixed and Mobile Termination* summarises the problem (referring to European termination rates, which are the rates that Telecom relies upon in support of its draft Undertaking):

Significant divergences in the regulatory treatment of fixed and mobile termination rates create a fundamental distortion between fixed and mobile markets and consumers. Furthermore, the absolute level of mobile termination rates remains high in a number of Member States compared to those applied in a number of countries outside of the European Union, and also compared to fixed termination rates generally....<sup>7</sup>

...[Regulators must] promote competition by, amongst other things, ensuring that all users derive maximum benefit in terms of choice, price and quality of service and that there is no distortion or restriction of competition. In order to achieve these objectives, the regulated termination rates should be brought down to the costs of an efficient operator.<sup>8</sup>

32. It is also increasingly recognised that the distortions caused by artificially high termination rates distort incentives to invest in, and migrate to, NGN, whether fixed or mobile. For example, in its mobile services review commenced in 2008, Ofcom note:<sup>9</sup>

---

<sup>6</sup>

<http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/ContentFiles/Documents/Woosh%20Orcon%20Kordia%20CallPlus%20and%20Slingshot%20subs%20on%20mobile%20termination%20pdf.pdf>

<sup>7</sup> Page 3

<sup>8</sup> Page 4

<sup>9</sup> Ofcom, *Mobile citizens, mobile consumers – Adapting regulation for a mobile, wireless world* at para 8.45 (20 August 2008)

The extent of convergence will also play a role, since any analysis of options for mobile call termination may also need to consider ongoing changes affecting fixed services, particularly the shift to next-generation networks. Any change to the interconnection regime in one part of the sector may have implications elsewhere and reform is likely to be best considered in light of all of the issues in the round (including questions about transitional issues).

33. Fixed and mobile convergence/substitution presents expanded opportunities for competition. For example, an end user increasingly has choices between mobile and fixed line solutions. However, if regulated termination rates for mobile are artificially high, and fixed termination rates are set correctly on a cost basis, enhanced competition and price opportunities (and welfare benefits) are lost.

#### **Example**

34. Say, for example:
  - (a) BAK is regulated for MTM termination; and
  - (b) The undertakings to the Minister remain in place for FTM termination (at 15 cpm for the year commencing 1 April 2009).
35. Where a Woosh fixed customer calls a Telecom mobile customer, it will recoup (if it can) the termination payment (a minimum of 15 cents) from its fixed customer. Of course, the cost for a call, to be recouped from the retail customer, often exceeds 15 cents.
36. If, however, that same Woosh customer uses her Vodafone cell phone to call the same Telecom mobile customer, Vodafone does not have to recoup the minimum of 15 cents. It's a BAK call.
37. This ultimately translates into the ability for Vodafone to offer a retail service at a much lower price. This is based solely on the market distortion caused by artificially high FTM rates, zero MTM rates, and a fixed termination regime that is cost-based (and BAK in the case of local calls).
38. The size of the regulatory distortion is so great that many customers could migrate to mobile, due to distorted regulation that is not consistent with optimal competition and welfare outcomes.
39. The same distortion problems arise, but to a lesser extent, if there is BAK for MTM, and regulation of FTM termination rates on a cost basis.
40. The cost of terminating from fixed lines is close to the cost of terminating calls from mobile. Additionally, the two-side market nature of calls is such that this factor also supports BAK for FTM. It is appropriate to have BAK for both FTM and MTM.
41. In conclusion, BAK is only appropriate if it is used for both FTM and MTM termination.

#### **Reject the Telecom and Vodafone draft Undertakings: the proposed rates are excessive**

42. In their draft Undertakings, Telecom and Vodafone maintain that the rates in the undertakings to the Minister should remain. Not only that, but they seek to gain extra years at comparably high rates, well in excess of cost. (The proposed glide path reduction is small and insignificant compared with cost, as noted below). This has the perverse outcome of extending the time of the problem, to the benefit of Vodafone and Telecom,

and the detriment of end users. That which is ostensibly offered as a positive is really a negative for competition and consumers.

43. In our 2008 MTR submissions, we outlined a number of reasons why the Commission should recommend regulation of FTM termination rates despite the undertakings to the Minister around 2 years ago. We accept Vodafone's and Telecom's point in their submissions that regulatory certainty is a significant factor. But it is only one factor of many, and the other considerations substantially outweigh the certainty consideration.
44. In addition to the matters raised in our earlier submission, we note two issues.

#### **Regulating MTM but not FTM leads to market distortion**

45. This is the point we have made above. Dealing with MTM without dealing with FTM negatively impacts competition and the NGN migration, in view of the artificially high pricing. This problem applies even if cost-based rates are regulated for MTM, and the FTM undertakings to the Minister remain. Those MTM rates are likely to be considerably lower than the artificially high FTM rates. As we note below, they may be in the order of 2 to 4 cents, but even if they are, say 5 to 10 cents, the distortion and its effects remain.

#### **Price benchmarking**

46. Telecom, in its submission, relies on current-day European benchmarks to justify continuing with the current rates in the undertakings to the Minister.
47. Leaving aside other considerations (for example, European rates are recognised as amongst the highest in the world and they are markedly higher than true cost<sup>10</sup>), no mention is made by Telecom of the major changes in Europe. Much of this had been raised in earlier submissions by us and NZC. That includes the strong signals and statements from the EU that it expects European MTRs to drop to around 1-2 Eurocents (approx NZ 2-4 cents).

#### **EU signals are now the reality**

48. These signals are rapidly converting into actual rates. For example, the French regulator (ARCEP) is proposing to reduce MTRs to 1 to 2 Eurocents (2-4 NZ cents).<sup>11</sup>
49. In commenting on this, the EU Telecoms Commissioner noted, having confirmed that true cost oriented termination rates will greatly benefit consumers.<sup>12</sup>

" Not only will it make for more affordable calls to all networks alike, **it will also [allow] all operators in France – mobile or fixed – [to] compete on a level playing field, foster investment and innovation. At this stage, ARCEP's approach clearly represents best European practice.** The French regulator is making very important efforts to bring mobile regulation in line with the forthcoming Commission Recommendation on the regulatory treatment of termination rates." (emphasis added)

50. The Italian regulator (AGCOM) has agreed to take the same approach. As well as dropping existing MTRs, AGCOM has confirmed that it will:

---

<sup>10</sup> See the EU observation at Para 31 of this submission

<sup>11</sup> This is occurring via a glide path reduction to 3 Eurocents (6 cents (NZ)) in 2010 (4 Eurocents for the new entrant MNO). (Telecoms: Commission welcomes French regulator's move to introduce competitive mobile termination tariffs (European Union release; 27 November 2008; IP/08/1810))

<sup>12</sup> Ibid

“revise in 2010 the values applicable in the year 2011-2012 on the basis of the “long-run incremental cost”-model [LRIC] developed in accordance with the forthcoming Commission Recommendation.”.<sup>13</sup>

51. That LRIC model is based on the draft of the EU Recommendation, which is expected to be issued shortly in final form. This is the model on which the EU Commissioner is expecting MTRs of 1-2 Eurocents (2-4 cents (NZ)). The draft calls for European regulators to achieve LRIC pricing by 2011 (or 2013 in some exceptional cases).

#### **January 2009 reversal and reduction of UK MTRs**

52. We also note that, on 16 January 2009, the UK Competition Commission released its review of MTRs that had been set by Ofcom (that is, the UK rates relied on by Telecom on Page 12 of its submission). The Commission reduced the UK MTRs by 1.5p (approx 4.2 NZ cents).<sup>14</sup>
53. This is based on the pre-existing UK regulatory regime. Therefore the Competition Commission did not have regard to the changes required by the EU, which can be expected to lead to a further and marked downward trend.
54. Hutchison 3G has calculated that, if the EU’s proposed LRIC model was applied in the UK, the MTR there would be less than 1 pence (i.e. less than 2.8 NZ cents).<sup>15</sup>

#### **Conclusion**

55. If current European rates are used, as proposed by Telecom, it is already apparent that their basket of benchmarks has reduced. However, the Telecom approach is not appropriate, for the following reasons, among others.

#### **Skate to the Puck**

56. We outline here what is set out in more detail in our earlier submissions to the Commission on whether there should be:
  - (a) an MTR investigation; and
  - (b) a roaming investigation
57. Benchmarking is an input into estimating what the price would ultimately be if a full price analysis was undertaken. It is a step on the path to determining price, not an end in itself. However, the MTR debate thus far pivots not around benchmarking as an end in itself but benchmarking only on historical benchmarks (i.e. backward not forward looking): so much so that we have noted in earlier submissions the incorrect reverse-engineering of real cost-based pricing, to get back to a benchmark.
58. Assume the pricing model is TSLRIC. The benchmarking process should be used to estimate what the TSLRIC price would be. Thus, simply applying historical benchmarks without considering future trends falls into error. This issue is particularly pronounced for MTRs, given the glide paths commonly in use, the considerable disparity between actual rates and underlying cost, and the wide range of benchmarks. Thus, simply applying

---

<sup>13</sup> Telecoms: Commissioner Reding welcomes commitment of Italy's telecoms regulator AGCOM to further reduce mobile termination rates as an “important step in the right direction” ( European Union release: MEMO/08/708 13 November 2008)

<sup>14</sup> Mobile Phone wholesale voice termination charges determination (Case 1083/3///07 and 1085/3/3/07: 16 January 2009)

<sup>15</sup> Hutchison 3G UK Ltd Response to Ofcom’s mobile review; 6 November 2008 at page 34.

today's benchmarks is backward looking. Where pricing is trending towards (under glide paths for example) must be taken into account.

59. It is necessary to "skate to the puck".
60. That is the position under the Act, when application for a Schedule 1 service is made by an access seeker, if the standard New Zealand model of benchmarking as Initial Pricing Principle (IPP) and TSLRIC as Final Pricing Principle (FPP) is used. The IPP process should be used to estimate, as best possible, the FPP, using benchmarks. The earlier MTR investigations and debate did not do this, and we have identified this as one of a number of reasons why it is appropriate to revisit the FTM undertakings.
61. The position is clearer during a Schedule 3 investigation. It would be wrong simply to use historical benchmarks when considering a draft Undertaking. The Commission must compare (a) the counterfactual (the price in the draft undertakings, adjusted for the minute-minimum factor) against (b) the factual (what the position is estimated to be if there is regulation). Importantly that factual is not the equivalent of the IPP (benchmarking), but an estimate of what the FPP would be. If the FPP is expected to be TSLRIC for example, the factual is the Commission's estimate of likely TSLRIC pricing, using benchmarks is a step on the path to calculating that estimate. That calculation must look at trends such as glide paths. In particular, the more reliable benchmark is what is at the end of the glide path, not the current MTR.
62. For example, to use only the current MTR in France, without regard to the projected 1 to 2 eurocent MTR in 2011, would fall into error, when the aim of the exercise is to estimate, as best possible, the estimated regulated price at the FPP stage (not the IPP stage).
63. This type of approach has not taken place in the debate thus far in New Zealand. Yet, not to follow this approach falls into error under the legislation (and as a matter of principle and appropriate outcomes), as Telecom does in its submission.
64. Applying this approach, and assuming TSLRIC is the factual, leads to a markedly lower estimate for the factual, compared with the data used by Telecom.
65. That assumes that TSLRIC is what the Commission would decide should be the pricing model. There is however strong international evidence that TSLRIC is not appropriate, and that rates would be much lower than what a TSLRIC model produces<sup>16</sup>. For example, there is the EU move to its LRIC model, as described in the draft Recommendation, and the increased support for BAK. Although TSLRIC is the only model used so far in our legislation (other than the BAK option for PSTN interconnection and retail-minus), there is nothing stopping the Commission from applying a different model such as marginal cost or LRIC (as defined by the EU). Indeed, that would be consistent with the international trends.
66. In summary, even if TSLRIC is the appropriate model, a correct assessment of the factual would produce a rate far lower than the rates in the undertakings to the Minister. However, the correct factual should be closer to the EU LRIC model (around 2 to 4 cents (NZ)), and/or BAK.

### **Per-minute minimum charge**

67. The draft Undertakings continue the minimum-minute charge. This markedly increases the real termination rate in New Zealand, as against the overseas benchmarks that, always or almost always, do not have a minimum-minute charge, based on the information we provided in our earlier submissions to the Commission.

---

<sup>16</sup> Additionally there is controversy around whether the application of TSLRIC by some regulators is incorrect and leads to excessive rates

68. The differences between the services said, by Telecom, to be provided by offshore MNOs and the services provided by NZ MNOs, appear to be minor, compared to this major difference.
69. The Commission, in undertaking the counterfactual analysis, should adjust for this minute-minimum difference. We have provided data on the length of sub-one minute calls on our networks, and we repeat our suggestion that the Commission obtains Vodafone's and Telecom's as their traffic will have a different spread of call length. That is likely to indicate that the real termination rate is higher than would be derived from our own traffic history, given the differences between our customer bases.

### **Glide path**

70. Extended multi-year glide paths, with a low downward trend, have been relatively uniquely applied to mobile services, in contrast with what has happened to fixed services. This contributes to the market distortions noted above.
71. Internationally, it is recognised that the time has come to bring this to an end, and that earlier (and questionable) justifications are no longer valid.
72. For example, the EU draft Recommendation concludes:<sup>17</sup>
- A period of transition until 31.12.2011 should be considered long enough to allow [regulators] to put the cost model in place and for operators to adapt their business plans accordingly while, on the other hand, recognising the pressing need to ensure that consumers derive maximum benefits in terms of efficient cost-based termination rates.
73. That is a 2008 draft, expected to be issued as a final Recommendation early this year. Applying the approach of each of ARCEP, AGCOM and the EU Commissioner, artificially high MTRs would drop, over 2-3 years, to somewhere in the order of 2 to 4 NZ cents. An expedited and rapidly reducing glide path.
74. Contrast that with the Vodafone and Telecom positions:
- (a) The undertakings to the Minister, which end in 2011 at 14 cents and 12 cents respectively for Vodafone and Telecom MTRs;
  - (b) The proposed extension of those undertakings, in the draft Schedule 3A Undertakings, via glide paths that end at 11 cents for Vodafone in 2014 and 10 cents for Telecom in 2013.
75. The time has come to bring an end to long glide paths. Arguments by long established MNOs that they need extended time to adjust are unsustainable.

### **Bundling and cross-subsidy**

76. In our earlier submissions, we submitted in detail on the problems caused by bundling. Like the impact of mobile services on the fixed services, the issues cannot be considered and resolved without considering the considerable impact of bundling and cross-subsidies (as between MNOs' mobile and fixed services). The dominant fixed/mobile operators can, in this environment cause decreased competition.

---

<sup>17</sup> At page 6. There is an extension to this timeline in limited instances (Para 20 on page 6).

### **Undertakings too rigid**

77. The experience with the undertakings to the Minister shows that unduly rigid undertakings create problems. While recognising the regulatory certainty factor, we would be particularly concerned if Undertakings as rigid (and biased against access seekers) as Vodafone's and Telecom's are accepted.
78. Ultimately, this and other factors may mean that suitable undertakings, capable of acceptance, will be rare. That is unfortunate given their potential to expedite resolution, but this appears to be the reality.

### **Non-price terms**

79. In our experience, the ICA terms are a continuation of the "take-it-or-leave-it" terms imposed by the access providers over many years.
80. It is beyond the scope of these submissions to be able to comment exhaustively on each unsatisfactory provision (such as (a) the "No VoIP" clause which has such significant implications and (b) the exclusion of termination of international traffic (for which the cost elements are nearly identical to termination of calls that originate within New Zealand: see the CallPlus submission of 5 September)). It is unrealistic to do this, when the price terms of the draft Undertaking are so unsatisfactory.
81. Ideally, a way should be found to deal with price separately from non-price terms. We would welcome a discussion with the parties and the Commission, to find a practical way forward to agree as many ICA terms as possible and to find a pragmatic way of resolving disputed issues. The reality is that this may only be possible as part of a standard terms proposal process after the services are included in Schedule 1. (The Schedule 3A Undertaking process looks to be an unsatisfactory vehicle). However, we are open to discussion of practical ways to advance this issue. We would particularly welcome global resolution of many of the fixed and mobile ICA non-price terms with Commission overview.

### **Draft Undertakings should not hold up the investigation**

82. We are not optimistic that adequate revised Undertakings will be provided, and we expect that the outcome will be the same as in the roaming investigation (i.e. rejection of Vodafone's draft Undertakings). We cannot see sufficient incentive for adequate Undertakings to be offered, in part because Vodafone and Telecom benefit from the time lag in Schedule 3 investigations and subsequent requests for determinations.
83. For this reason we are pleased to note and support the Commission's intention to continue regardless with the Schedule 3 investigation, with relatively tight timelines. If it assists, we would welcome a discussion aimed at expediting the process, whilst achieving appropriate outcomes.

### **For further information please contact:**

Susie Stone, Kordia Limited (021 899 202)  
[susie.stone@kordia.co.nz](mailto:susie.stone@kordia.co.nz)

Kristin Dunne-Powell, Woosh Limited (021 451 169)

[Kristin@woosh.com](mailto:Kristin@woosh.com)

Steven Bond-Smith, Orcon Internet Limited (021 766 434)  
[steven.bond-smith@team.orcon.net.nz](mailto:steven.bond-smith@team.orcon.net.nz)